

110TH CONGRESS
2D SESSION

S. 3722

To amend the Help America Vote Act of 2002 to provide for auditable, independent verification of ballots, to ensure the security of voting systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8 (legislative day, NOVEMBER 20), 2008

Mrs. FEINSTEIN (for herself and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Help America Vote Act of 2002 to provide for auditable, independent verification of ballots, to ensure the security of voting systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Bipartisan Electronic Voting Reform Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Independent verification of ballots.
- Sec. 3. Audits.
- Sec. 4. Election security.
- Sec. 5. Testing and certification.
- Sec. 6. Research and development.
- Sec. 7. Reauthorization of requirements payments.
- Sec. 8. Technical guidelines development committee.
- Sec. 9. Prohibiting refusal to accept voter registration and absentee ballot applications and Federal write-in absentee ballots for failure to meet nonessential requirements.
- Sec. 10. Ballot layout design.

1 SEC. 2. INDEPENDENT VERIFICATION OF BALLOTS.

2 (a) IN GENERAL.—Clause (i) of section 301(a)(1)(A)
 3 of the Help America Vote Act of 2002 (42 U.S.C.
 4 15481(a)(1)(A)(i)) is amended by inserting “and, in the
 5 case of any voting system other than a voting system
 6 which uses paper ballots that are personally marked by
 7 the voter, in the manner provided in paragraph (7),” after
 8 “(in a private and independent manner”.

9 (b) METHOD OF VERIFICATION FOR CERTAIN VOT-
 10 ING SYSTEMS.—

11 (1) IN GENERAL.—Section 301(a) of the Help
 12 America Vote Act of 2002 (42 U.S.C. 15481(a)) is
 13 amended by adding at the end the following new
 14 paragraph:

15 “(7) METHOD OF INDEPENDENT
 16 VERIFICATION.—In order to meet the requirements
 17 of paragraph (1)(A)(i) with respect to any voting
 18 system to which this paragraph applies:

1 “(A) IN GENERAL.—The voting system
2 shall provide for verification of the votes se-
3 lected by the voter by a means that—

4 “(i) is independent of the device on
5 which the vote is cast; and

6 “(ii) permits verification through the
7 use of—

8 “(I) a paper record;

9 “(II) an electronic record;

10 “(III) an audio record;

11 “(IV) a video record;

12 “(V) a pictorial record; or

13 “(VI) another independently pro-
14 duced record.

15 “(B) AUDIT CAPACITY.—The final record
16 used for independent verification under sub-
17 paragraph (A) for each voter shall be auditable.

18 “(C) ACCESSIBILITY FOR INDIVIDUALS
19 WITH DISABILITIES AND LANGUAGE MINORI-
20 TIES.—Any method of independent verification
21 under subparagraph (A) shall—

22 “(i) be accessible for individuals with
23 disabilities, including nonvisual accessi-
24 bility for the blind and visually impaired,
25 in a manner that provides the same oppor-

tunity for access and participation (including privacy and independence) as for other voters; and

“(ii) provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a).

“(D) VOTING SYSTEMS TO WHICH THIS PARAGRAPH APPLIES.—The requirements of this paragraph apply to any voting system other than—

“(i) a voting system which uses paper ballots that are personally marked by the voter; and

“(ii) a voting system purchased before January 1, 2009, in order to meet the requirements of paragraph (3)(B).

“(E) CLARIFICATION.—For purposes of this paragraph, a paper record which is produced by the device on which a vote is cast shall be considered independent of such device.”.

(2) INNOVATIVE APPROACHES TO VOTE VERIFICATION.—

(A) RECOMMENDATIONS.—Section 221 of such Act (42 U.S.C. 15361) is amended—

1 (i) by redesignating subsection (f) as
 2 subsection (g); and

3 (ii) by inserting after subsection (e)
 4 the following new subsection:

5 “(f) INNOVATIVE APPROACHES TO VOTE
 6 VERIFICATION.—

7 “(1) DEVELOPMENT OF RECOMMENDATIONS.—

8 The Development Committee, with technical support
 9 provided by the National Institute of Standards and
 10 Technology under subsection (e), shall develop rec-
 11 ommendations for the use of innovative approaches
 12 for the verification of votes under section
 13 301(a)(7)(A)(ii).

14 “(2) CONSIDERATIONS.—In developing rec-
 15 ommendations under this subsection, the Develop-
 16 ment Committee may consider—

17 “(A) best scientific practices and technical
 18 knowledge; and

19 “(B) the results of any development, test-
 20 ing, or analysis conducted under a grant made
 21 under section 248 or 249.

22 “(3) DEADLINE FOR INITIAL SET OF REC-
 23 OMMENDATIONS.—The Development Committee
 24 shall provide its first set of recommendations under
 25 this subsection to the Executive Director of the

Commission not later than 2 years after the date of enactment of the Bipartisan Electronic Voting Reform Act of 2008.

“(4) ANNUAL REPORTS.—Not later than 1 year after such date of enactment, and annually thereafter, the Commission shall submit a report to Congress on the process, progress, and the costs of implementation of innovative approaches for the verification of votes under section 301(a)(7)(A)(ii).”.

(B) PROCESS FOR ADOPTION.—Section 222(b)(1) of such Act (42 U.S.C. 15362(b)(1)) is amended by inserting “, including any recommendations provided by the Technical Guidelines Development Committee under section 221(f)” before the period at the end.

(c) EFFECTIVE DATE.—Subsection (d) of section 301 of such Act (42 U.S.C. 15481(d)) is amended—

(1) by striking “Each State” and inserting the following:

“(1) IN GENERAL.—Except as provided in paragraph (2), each State”; and

(2) by adding at the end the following new paragraph:

“(2) INDEPENDENT VERIFICATION PROVISIONS.—

1 “(A) IN GENERAL.—Each State and juris-
 2 diction shall be required to comply with the re-
 3 quirements of paragraph (7) of subsection (a)
 4 on and after January 1, 2013.

5 “(B) WAIVER.—In the case of a State or
 6 jurisdiction which is granted a waiver by the
 7 Election Assistance Commission pursuant to
 8 this subparagraph, subparagraph (A) shall be
 9 applied by substituting ‘2015’ for ‘2013’.”.

10 **SEC. 3. AUDITS.**

11 (a) PURPOSE.—The purposes of this section are—

12 (1) to ensure that each certificate of election
 13 awarded under State law is justified by the vote to-
 14 tals;

15 (2) to ensure that, even in elections where the
 16 results are not close, individual votes are counted
 17 correctly; and

18 (3) to provide information to election officials
 19 for the improvement of election processes and tech-
 20 nologies.

21 (b) MANDATORY AUDITS.—

22 (1) IN GENERAL.—Subtitle A of title III of the
 23 Help America Vote Act of 2002 (42 U.S.C. 15481
 24 et seq.) is amended by redesignating sections 304
 25 and 305 as sections 305 and 306, respectively, and

1 by inserting after section 303 the following new sec-
 2 tion:

3 **“SEC. 304. ELECTION AUDITS.**

4 “(a) AUDITS.—

5 “(1) IN GENERAL.—With respect to each elec-
 6 tion for Federal office, each State shall conduct an
 7 audit.

8 “(2) PUBLIC PARTICIPATION.—Each audit
 9 under this section shall be conducted in a public and
 10 transparent manner.

11 “(3) AUDIT REPORTS.—

12 “(A) STATE SUBMISSION OF REPORT.—

13 Each State shall submit to the Commission a
 14 report, in such form as provided by the Com-
 15 mission, on the results of the audit conducted
 16 under this section.

17 “(B) PUBLICATION.—The Commission
 18 shall publish each report submitted under sub-
 19 paragraph (A) upon receipt.

20 “(b) EFFECTIVE DATE.—Each State shall be re-
 21 quired to comply with the requirements of this section on
 22 and after the date such State is required to comply with
 23 the requirements under section 301(a)(7).”.

24 (2) AVAILABILITY OF ENFORCEMENT UNDER
 25 HELP AMERICA VOTE ACT OF 2002.—Section 401 of

1 such Act (42 U.S.C. 15511) is amended by striking
 2 “and 303” and inserting “303, and 304”.

3 (3) CLERICAL AMENDMENT.—The table of con-
 4 tents of the Help America Vote Act of 2002 is
 5 amended by striking the items relating to sections
 6 304 and 305 and inserting the following:

“Sec. 304. Election audits.

“Sec. 305. Minimum requirements.

“Sec. 306. Methods of implementation left to discretion of State.”.

7 (c) REQUIREMENTS FOR STATE PLANS.—Section
 8 254(a) of the Help America Vote Act of 2002 (42 U.S.C.
 9 15404(a)) is amended by adding at the end the following
 10 new paragraph:

11 “(14) A description of the audit procedures
 12 that will be used by the State for the purpose of
 13 conducting audits under section 304(a).”.

14 (d) MODEL AUDIT GUIDELINES.—

15 (1) IN GENERAL.—Subtitle A of title II of the
 16 Help America Vote Act of 2002 (42 U.S.C. 15321
 17 et seq.) is amended by adding at the end the fol-
 18 lowing new part:

19 **“PART 4—MODEL AUDIT GUIDELINES.**

20 **“SEC. 223. AUDIT GUIDELINES DEVELOPMENT TASK FORCE.**

21 “(a) ESTABLISHMENT.—The Commission shall es-
 22 tablish an Audit Guidelines Development Task Force
 23 (hereafter in this part referred to as the ‘Task Force’).

24 “(b) MEMBERSHIP.—

1 “(1) IN GENERAL.—The Task Force shall be
 2 composed of individuals who are experts in such
 3 fields as election audits, physical security of ballots,
 4 recounts, computer technology, and election manage-
 5 ment. The composition of the Task Force shall (to
 6 the extent possible) reflect the demographic composi-
 7 tion of the voting age population of the United
 8 States.

9 “(2) CONSULTATION.—The Commission shall
 10 consult with the Director of the National Institute of
 11 Standards and Technology on—

12 “(A) the composition of the Task Force;
 13 and

14 “(B) the appointment of members to the
 15 Task Force.

16 “(c) DUTIES.—

17 “(1) IN GENERAL.—The Task Force shall as-
 18 sist the Commission in developing model audit
 19 guidelines for administrative and procedural prac-
 20 tices to ensure efficient, transparent, and accurate
 21 audits of Federal elections. Such guidelines shall in-
 22 clude best practices with respect to auditing Federal
 23 elections using the following independently verified
 24 records under section 301(a)(7):

25 “(A) Paper records.

1 “(B) Electronic records.

2 “(C) Audio records.

3 “(D) Video records.

4 “(E) Pictorial records.

5 “(F) Other independently produced
6 records.

7 “(2) DEADLINE FOR INITIAL SET OF REC-
8 OMMENDATIONS.—The Task Force shall provide its
9 first set of recommendations under this section to
10 the Executive Director of the Commission not later
11 than 1 year after the Task Force is established.

12 “(d) CONSIDERATIONS.—In developing the model
13 audit guidelines under subsection (c), the Task Force shall
14 consider—

15 “(1) the time, place, and manner for conducting
16 audits;

17 “(2) processes for completing manual audits of
18 independently verified records under section
19 301(a)(7) comparing such records with vote tallies;

20 “(3) the cost and burden on local election offi-
21 cials of conducting an audit;

22 “(4) the personnel and management require-
23 ments of conducting audits;

24 “(5) recommended protocols for auditing the se-
25 curity of elections, including chain of custody proto-

1 cols, the maintenance, security, and accuracy of
 2 voter registration lists, and other procedures; and

3 “(6) the interaction of audits with State laws,
 4 including laws pertaining to recounts.

5 “(e) PUBLICATION OF REPORT.—The Task Force
 6 shall make its recommendations to the Commission public
 7 upon delivering them to the Commission.

8 **“SEC. 224. PROCESS FOR ADOPTION.**

9 “The Commission shall provide for publication of the
 10 recommendations from the Task Force, an opportunity for
 11 public comment on the proposed model audit guidelines,
 12 and an opportunity for a public hearing on the record.
 13 Final model audit guidelines shall be adopted by the Com-
 14 mission after a majority vote of the members of the Com-
 15 mission.”.

16 (2) TECHNICAL AMENDMENT.—Section 202 of
 17 such Act (42 U.S.C. 15322) is amended by striking
 18 “and” at the end of paragraph (5), by striking the
 19 period at the end of paragraph (6) and inserting “;
 20 and”, and by adding at the end the following new
 21 paragraph:

22 “(7) carrying out the duties described in part 4
 23 (relating to the adoption of model audit guidelines),
 24 including the maintenance of a clearinghouse of in-
 25 formation on the experiences of State and local gov-

1 ernments in implementing the guidelines and in con-
 2 ducting audits in general.”.

3 (3) CLERICAL AMENDMENT.—The table of con-
 4 tents of such Act is amended by inserting after the
 5 item relating to section 222 the following:

“PART 4—MODEL AUDIT GUIDELINES

“Sec. 223. Audit Guidelines Development Task Force.

“Sec. 224. Process for adoption.”.

6 **SEC. 4. ELECTION SECURITY.**

7 (a) CHAIN OF CUSTODY PROTOCOLS AND DISCLO-
 8 SURE.—

9 (1) IN GENERAL.—Section 301(a) of the Help
 10 America Vote Act of 2002 (42 U.S.C. 15481(a)), as
 11 amended by section 2(a), is amended by adding at
 12 the end the following new paragraphs:

13 “(8) CHAIN OF CUSTODY PROTOCOLS.—

14 “(A) IN GENERAL.—No voting system may
 15 be used in an election for Federal office unless
 16 the chain of custody for the handling of all vot-
 17 ing systems, technologies, and other innovations
 18 used in connection with voting systems for inde-
 19 pendent verification and for other voting proc-
 20 esses and purposes (including ballots and inde-
 21 pendently verified records under section
 22 301(a)(7)) is documented by State election offi-
 23 cials, under standards developed by the State,

1 and made available to the Commission upon re-
2 quest.

3 “(B) CONSIDERATION OF RELEVANT GUID-
4 ANCE.—The Commission shall encourage States
5 to take into consideration any relevant vol-
6 untary guidance adopted by the Commission
7 under subtitle B in developing standards under
8 subparagraph (A).

9 “(9) DISCLOSURE.—

10 “(A) DISCLOSURE OF ELECTION-DEDI-
11 CATED SOFTWARE.—No voting system used in
12 an election for Federal office shall at any time
13 contain or use any software unless the State
14 using such voting system discloses a State-cer-
15 tified copy of the software (including executable
16 code and source code) to the Commission. The
17 software shall be disclosed in a form and man-
18 ner prescribed by the Commission, except that,
19 in the case of software additions or patches
20 which are necessary for the secure and proper
21 functioning of the voting system and the dislo-
22 sure of which cannot be made in adequate time
23 prior to the election, such disclosure shall be
24 made in a reasonable period of time after the
25 election.

1 “(B) STORAGE OF SOFTWARE.—The Com-
 2 mission shall provide for the storage of software
 3 disclosed under this paragraph.

4 “(C) USE OF INFORMATION.—Software
 5 disclosed to the Commission under this para-
 6 graph may only be provided to—

7 “(i) the National Institute of Stand-
 8 ards and Technology; and

9 “(ii) the Voting System Software Re-
 10 view Committee established under subpara-
 11 graph (D), for purposes of conducting re-
 12 views under such subparagraph.

13 “(D) VOTING SYSTEM SOFTWARE REVIEW
 14 COMMITTEE.—

15 “(i) ESTABLISHMENT.—The National
 16 Institute of Standards and Technology
 17 shall establish a Voting System Software
 18 Review Committee (hereinafter in this sub-
 19 paragraph referred to as the ‘committee’),
 20 which shall review voting system software
 21 that has not been certified by the Commis-
 22 sion under section 231.

23 “(ii) MEMBERS.—The committee shall
 24 be composed of members appointed by the
 25 Director of the National Institute of

1 Standards and Technology, in consultation
2 with the Commission, from among aca-
3 demic and industry experts.

4 “(iii) VACANCIES.—A vacancy on the
5 committee—

6 “(I) shall not affect the powers of
7 the committee; and

8 “(II) shall be filled in the same
9 manner as the original appointment
10 was made.

11 “(iv) APPOINTMENT.—Members of the
12 committee shall be appointed as special
13 Government employees for purposes of sec-
14 tion 202(a) of title 18, United States Code.

15 “(v) STATUS AS PERMANENT COM-
16 MITTEE.—Section 14 of the Federal Advi-
17 sory Committee Act (5 U.S.C. App. 2)
18 shall not apply to the committee.

19 “(vi) CONDUCT OF REVIEWS.—

20 “(I) IN GENERAL.—The com-
21 mittee shall review voting system soft-
22 ware that has not been certified by
23 the Commission under section 231
24 (and the voting system which contains

1 such software, if provided) upon re-
2 quest by—

3 “(aa) the chief State election
4 official of a State; or

5 “(bb) the Commission.

6 “(II) SCOPE OF REVIEW.—The
7 review conducted under subclause (I)
8 shall be sufficient to address any
9 issues raised by the chief State elec-
10 tion official or the Commission, as ap-
11 plicable.

12 “(III) ACCESS TO INFORMA-
13 TION.—The Commission shall provide
14 software disclosed by States under
15 subparagraph (A) to the National In-
16 stitute of Standards and Technology
17 and, upon request by the committee,
18 to the committee. The committee may
19 request and use such software solely
20 for purposes of conducting reviews
21 under this subparagraph. The com-
22 mittee may, through the National In-
23 stitute of Standards and Technology,
24 request that a State provide the com-
25 mittee with access to voting system

1 hardware as necessary for purposes of
2 conducting such reviews.

3 “(IV) PETITION FOR REVIEWS.—

4 The committee may petition the Com-
5 mission to request a review under sub-
6 clause (I)(bb).

7 “(vii) REPORTS.—

8 “(I) IN GENERAL.—The com-
9 mittee shall submit a report to the
10 Commission and to the National Insti-
11 tute of Standards and Technology
12 containing the results of any review
13 conducted under this subparagraph,
14 including the findings of the com-
15 mittee with respect to the issues
16 raised by the chief State election offi-
17 cial or the Commission, as applicable.

18 “(II) PUBLICATION.—The Na-
19 tional Institute of Standards and
20 Technology shall publish each report
21 submitted under subclause (I), to-
22 gether with any comments of the Na-
23 tional Institute of Standards and
24 Technology with respect to the find-
25 ings in each such report.

1 “(viii) COMPENSATION OF MEM-
2 BERS.—

3 “(I) NON-FEDERAL EMPLOY-
4 EES.—A member of the committee
5 who is not an officer or employee of
6 the Federal Government may be com-
7 pensated at a rate equal to the daily
8 equivalent of the annual rate of basic
9 pay prescribed for level IV of the Ex-
10 ecutive Schedule under section 5315
11 of title 5, United States Code, for
12 each day (including travel time) dur-
13 ing which the member is engaged in
14 the performance of the duties of the
15 committee.

16 “(II) FEDERAL EMPLOYEES.—A
17 member of the committee who is an
18 officer or employee of the Federal
19 Government shall serve without com-
20 pensation in addition to the com-
21 pensation received for the services of
22 the member as an officer or employee
23 of the Federal Government.

24 “(ix) TRAVEL EXPENSES.—A member
25 of the committee shall be allowed travel ex-

penses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the committee.

“(x) EXPERTS AND CONSULTANTS.—The National Institute of Standards and Technology may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, on behalf of the committee.

“(E) PROTECTION OF SOFTWARE PROVIDED THROUGH DISCLOSURE.—Any recipient of software disclosed under this paragraph—

“(i) shall not compromise the integrity of the software;

“(ii) shall not disclose any trade secrets or other confidential commercial information with respect to the software; and

“(iii) shall not violate any intellectual property rights in the software.”.

(2) CONFORMING AMENDMENT.—Section 301(d)(2)(A) of such Act, as added by section 2(c),

1 is amended by striking “paragraph (7)” and insert-
 2 ing “paragraphs (7), (8), and (9)”.

3 (b) MINIMUM STANDARDS TO ENSURE INTEGRITY
 4 OF VOTING PROCESS AND EDUCATION AND TRAINING OF
 5 POLL WORKERS.—Section 254(a) of such Act (42 U.S.C.
 6 15404(a)), as amended by section 3(c), is amended by
 7 adding at the end the following new paragraph:

8 “(15) How the State will establish minimum
 9 standards with respect to—

10 “(A) ensuring the integrity of the voting
 11 process at the polling place on Election Day
 12 (which may include standards with respect to
 13 chain of custody, parallel testing of voting sys-
 14 tems, routine inspections of polling places for
 15 the use of appropriate polling procedures, and
 16 other processes); and

17 “(B) the education and training of poll
 18 workers (which may include standards with re-
 19 spect to Federal and State law requirements,
 20 voting systems, the provision of contact infor-
 21 mation, and other processes).”.

22 (c) CONTINGENCY PLANS.—Section 254(a) of such
 23 Act (42 U.S.C. 15404(a)), as amended by subsection (b),
 24 is amended by adding at the end the following new para-
 25 graph:

1 “(16) How the State will provide for contin-
2 gency plans in the event of voting system failures
3 and other events, such as national or State emer-
4 gencies, that may impact the results of an election
5 for Federal office, including—

6 “(A) how the State will ensure the integ-
7 rity of the voting process on election day—

8 “(i) at the polling place (which may
9 include the use of emergency ballots by
10 means of a paper record, an electronic
11 record, an audio record, a video record, a
12 pictorial record, or another independently
13 produced record); and

14 “(ii) at any place other than the poll-
15 ing place;

16 “(B) if the State provides for the use of
17 emergency paper ballots, how the State will
18 comply with the accessibility requirements for
19 individuals with disabilities under section
20 301(a)(3)(A) and the alternative language ac-
21 cessibility requirements under section
22 301(a)(4); and

23 “(C) the selection of polling locations that
24 are best able to manage voting system failures

1 and other events that may impact the elec-
2 tion.”.

3 (d) VOLUNTARY VOTING SYSTEM GUIDELINES.—
4 Section 222 of such Act (42 U.S.C. 15362) is amended
5 by adding at the end the following new subsection:

6 “(f) GUIDELINES.—The voluntary voting system
7 guidelines referred to in this Act shall be the most recent
8 version of the guidelines adopted by the Commission under
9 subsection (d) after the guidelines effective in 2007.”.

10 **SEC. 5. TESTING AND CERTIFICATION.**

11 (a) IN GENERAL.—Section 231(b) of the Help Amer-
12 ica Vote Act of 2002 (42 U.S.C. 15371(b)) is amended
13 by adding at the end the following new paragraphs:

14 “(3) PROHIBITING CONFLICTS OF INTEREST
15 AND ENSURING TESTING INDEPENDENCE.—

16 “(A) PROHIBITING CONFLICTS OF INTER-
17 EST.—

18 “(i) IN GENERAL.—A laboratory may
19 not be accredited by the Commission for
20 purposes of this section unless—

21 “(I) the laboratory certifies that
22 the only compensation it receives for
23 the testing carried out in connection
24 with the certification, decertification,
25 and recertification of the manufactur-

1 er's voting system hardware and soft-
2 ware is the payment made from the
3 Election Assistance Commission Vot-
4 ing System Testing Revolving Fund
5 under paragraph (4);

6 “(II) the laboratory meets such
7 standards as the Commission shall es-
8 tablish (after notice and opportunity
9 for public comment) to prevent the ex-
10 istence or appearance of any conflict
11 of interest in the testing carried out
12 by the laboratory under this section,
13 including standards to ensure that the
14 laboratory does not have a financial
15 interest in the manufacture, sale, and
16 distribution of voting system hardware
17 and software, and is sufficiently inde-
18 pendent from other persons with such
19 an interest;

20 “(III) the laboratory certifies
21 that it will permit an expert des-
22 ignated by the Commission to observe
23 any testing the laboratory carries out
24 under this section; and

1 “(IV) the laboratory, upon com-
2 pletion of any testing carried out
3 under this section, discloses the test
4 protocols, results, and all communica-
5 tion between the laboratory and the
6 manufacturer to the Commission.

7 “(ii) AVAILABILITY OF RESULTS.—
8 Upon receipt of information under clause
9 (i), the Commission shall make the infor-
10 mation available promptly to election offi-
11 cials and the public. The Commission shall
12 ensure such disclosure does not include any
13 trade secrets or confidential information
14 and does not violate intellectual property
15 rights.

16 “(iii) ADDITIONAL REQUIREMENTS.—
17 The Commission may establish—

18 “(I) requirements for the govern-
19 ance of accredited laboratories; and

20 “(II) such additional require-
21 ments as the Commission determines
22 are necessary to improve the ethical,
23 effective, and independent testing of
24 voting system hardware and software
25 under this section.

1 “(B) TESTING INDEPENDENCE.—The
 2 Commission shall establish procedures to ensure
 3 that all testing of voting system hardware and
 4 software under this section by accredited lab-
 5 oratories is conducted in a manner that is inde-
 6 pendent from the influence and control of the
 7 manufacturer of such hardware or software.

8 “(4) ESTABLISHMENT OF A REVOLVING FUND
 9 TO PROVIDE FOR THE INDEPENDENT TESTING OF
 10 VOTING SYSTEMS BY THE COMMISSION.—

11 “(A) IN GENERAL.—There is hereby estab-
 12 lished in the treasury of the United States a re-
 13 volving fund, to be known as the ‘Election As-
 14 sistance Commission Voting System Testing
 15 Revolving Fund’ (hereinafter in this paragraph
 16 referred to as the ‘Fund’), consisting of—

17 “(i) such amounts as are collected
 18 pursuant to subparagraph (B); and

19 “(ii) such amounts as are appro-
 20 priated to the Fund pursuant to the au-
 21 thorization under subparagraph (F).

22 “(B) COLLECTION OF FEES.—

23 “(i) IN GENERAL.—The Commission
 24 shall establish fees for testing carried out
 25 in connection with the certification, decer-

1 tification, and recertification of voting sys-
2 tem hardware and software under this sec-
3 tion.

4 “(ii) DETERMINATION OF FEE
5 AMOUNT.—The amount of the fee estab-
6 lished under clause (i) shall be equal to the
7 sum of—

8 “(I) the costs to an accredited
9 laboratory of conducting the testing of
10 such hardware or software (as esti-
11 mated by the Commission); and

12 “(II) an appropriate percentage
13 of the costs of the Commission which
14 are associated with administering,
15 overseeing, and operating the Fund
16 (as determined by the Commission).

17 “(C) USE OF FUNDS.—Amounts in the
18 Fund may be used for the following purposes:

19 “(i) To provide payments to accred-
20 ited laboratories for the testing of voting
21 system hardware and software by such lab-
22 oratories in connection with the certifi-
23 cation, decertification, and recertification
24 of the hardware and software under this
25 section.

1 “(ii) To administer, oversee, and oper-
2 ate the Fund, except such amounts may
3 not be used for the hiring or payment of
4 personnel.

5 “(iii) To return any unused portion of
6 fees collected under subparagraph (B) in
7 the case where such fees exceeded the ac-
8 tual costs of the testing conducted or an
9 appropriate percentage of the actual costs
10 associated with administering, overseeing,
11 and operating the Fund.

12 “(D) AVAILABILITY OF FUNDS.—Amounts
13 in the Fund shall be available to the Commis-
14 sion without fiscal year limitation.

15 “(E) ANNUAL REPORT TO CONGRESS.—
16 Not later than June 30 of each year (beginning
17 with 2010), the Commission shall submit to
18 Congress a report on the Fund established
19 under this paragraph. Such report shall include
20 the following information:

21 “(i) During the preceding calendar
22 year, the number of instances where voting
23 system hardware and software was—

1 “(I) submitted to an accredited
2 laboratory for testing under this sec-
3 tion;

4 “(II) tested by each accredited
5 laboratory under this section; and

6 “(III) certified, decertified, or re-
7 certified by an accredited laboratory
8 as a result of such testing.

9 “(ii) The balance remaining in the
10 Fund on September 30 of the preceding
11 fiscal year.

12 “(iii) The total amount of fees col-
13 lected under subparagraph (B) during the
14 preceding fiscal year.

15 “(iv) The total amount disbursed from
16 the Fund during the preceding fiscal year.

17 “(v) A description of how fees col-
18 lected under subparagraph (B) were used
19 during the preceding fiscal year.

20 “(F) AUTHORIZATION OF APPROPRIA-
21 TIONS.—

22 “(i) IN GENERAL.—There are author-
23 ized to be appropriated such sums as are
24 necessary to carry out this paragraph.

1 “(ii) AVAILABILITY OF FUNDS.—Any
 2 amounts appropriated pursuant to the au-
 3 thority of clause (i) shall remain available
 4 without fiscal year limitation until ex-
 5 pended.

6 “(5) DISSEMINATION OF ADDITIONAL INFORMA-
 7 TION ON ACCREDITED LABORATORIES.—

8 “(A) INFORMATION ON TESTING.—The
 9 Commission shall disseminate to the public the
 10 identification of the laboratory which carried
 11 out the testing.

12 “(B) LABORATORIES WITH ACCREDITA-
 13 TION REVOKED OR SUSPENDED.—If the Com-
 14 mission revokes, terminates, or suspends the ac-
 15 creditation of a laboratory under this section, or
 16 if the Commission has credible evidence of sig-
 17 nificant security failures at accredited labora-
 18 tories, the Commission shall promptly notify
 19 Congress, the chief State election official of
 20 each State, and the public.

21 “(6) GAO AUDITS.—

22 “(A) IN GENERAL.—The Comptroller Gen-
 23 eral of the United States (in this paragraph re-
 24 ferred to as the ‘Comptroller General’) shall
 25 conduct audits of—

1 “(i) the process for testing voting sys-
 2 tem hardware and software under this sec-
 3 tion; and

4 “(ii) the Election Assistance Commis-
 5 sion Voting System Testing Revolving
 6 Fund established under paragraph (4).

7 “(B) REPORTS.—The Comptroller General
 8 shall submit reports to Congress containing the
 9 results of each audit conducted under subpara-
 10 graph (A).”.

11 (b) CONFORMING AMENDMENTS.—Section 231 of
 12 such Act (42 U.S.C. 15371) is further amended—

13 (1) in subsection (a)(1), by striking “testing,
 14 certification,” and all that follows and inserting the
 15 following: “testing of voting system hardware and
 16 software by accredited laboratories in connection
 17 with the certification, decertification, and recertifi-
 18 cation of the hardware and software for purposes of
 19 this Act.”;

20 (2) in subsection (a)(2), by striking “testing,
 21 certification,” and all that follows and inserting the
 22 following: “testing of its voting system hardware and
 23 software by the laboratories accredited by the Com-
 24 mission under this section in connection with certi-
 25 fying, decertifying, and recertifying such hardware.”;

1 (3) in subsection (b)(1), by striking “testing,
2 certification, decertification, and recertification” and
3 inserting “testing”; and

4 (4) by striking subsection (d).

5 (c) DEADLINE FOR ESTABLISHMENT OF STANDARDS
6 AND PROCEDURES AND ESCROW ACCOUNT.—

7 (1) IN GENERAL.—The Election Assistance
8 Commission shall establish the standards described
9 in section 231(b)(3)(A) of the Help America Vote
10 Act of 2002, the procedures described in section
11 231(b)(3)(B) of such Act, and the Election Assist-
12 ance Commission Voting System Testing Revolving
13 Fund under section 231(b)(4) of such Act (as added
14 by subsection (a)) not later than 12 months after
15 the date of the enactment of this Act. Until such
16 time as the Commission establishes such standards,
17 procedures, and Fund, the accreditation of labora-
18 tories and the procedure for testing of voting system
19 hardware and software used as of the date of the en-
20 actment of this Act shall remain in effect.

21 (2) CLARIFICATION.—The amendments made
22 by this section shall not apply to any voting system
23 hardware or software submitted for testing under
24 section 231 of the Help America Vote Act of 2002
25 (42 U.S.C. 15371) prior to the date on which the

1 Secretary establishes such standards, procedures,
2 and Fund.

3 **SEC. 6. RESEARCH AND DEVELOPMENT.**

4 (a) GRANTS FOR THE DEVELOPMENT AND TESTING
5 OF NEW VOTING SYSTEMS, TECHNOLOGIES, AND INNOVA-
6 TIONS.—

7 (1) IN GENERAL.—Subtitle C of title II of the
8 Help America Vote Act of 2002 (42 U.S.C. 15321
9 et seq.) is amended by adding at the end the fol-
10 lowing new section:

11 **“SEC. 248. GRANTS FOR THE DEVELOPMENT AND TESTING**
12 **OF NEW VOTING SYSTEMS, TECHNOLOGIES,**
13 **AND INNOVATIONS.**

14 “(a) IN GENERAL.—The Commission shall, in con-
15 sultation with the National Institute of Standards and
16 Technology, make grants to qualified academic and re-
17 search institutions for the development and testing of new
18 voting systems, technologies, and innovations for purposes
19 of meeting the independent verification requirements
20 under section 301(a)(7).

21 “(b) ELIGIBILITY.—An academic and research insti-
22 tution is eligible to receive a grant under this section if
23 it submits an application to the Commission at such time,
24 in such form, and containing such information and certifi-
25 cations as the Commission may require.

1 “(c) PEER REVIEW PRIOR TO CONDUCT OF GRANT
 2 ACTIVITIES.—The Commission shall conduct peer review
 3 of any activities proposed to be conducted under a grant
 4 made under this section prior to the conduct of such ac-
 5 tivities.

6 “(d) APPLICABILITY OF REGULATIONS GOVERNING
 7 PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL
 8 ASSISTANCE.—Any invention made by the recipient of a
 9 grant under this section using funds provided under this
 10 section shall be subject to chapter 18 of title 35, United
 11 States Code (relating to patent rights in inventions made
 12 with Federal assistance).

13 “(e) REPORT.—

14 “(1) IN GENERAL.—Each academic and re-
 15 search institution which receives a grant under this
 16 section shall submit to the Commission a report de-
 17 scribing the activities carried out with the funds pro-
 18 vided under the grant.

19 “(2) DEADLINE.—An academic and research
 20 institution shall submit a report required under
 21 paragraph (1) not later than 6 months after the end
 22 of the fiscal year for which the entity received the
 23 grant which is the subject of the report.

24 “(f) AUTHORIZATION OF APPROPRIATIONS.—

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 247 the following new item:

(b) PILOT PROGRAM FOR TESTING AND ANALYZING
THE PERFORMANCE OF NEW VOTING SYSTEMS, TECH-
NOLOGIES, AND INNOVATIONS.—

19 **“SEC. 249. PILOT PROGRAM FOR TESTING AND ANALYZING**
20 **THE PERFORMANCE OF NEW VOTING SYS-**
21 **TEMS, TECHNOLOGIES, AND INNOVATIONS.**

22 “(a) IN GENERAL.—The Commission shall, in con-
23 sultation with the National Institute of Standards and
24 Technology, make grants to carry out pilot programs

1 under which new voting systems, technologies, and other
2 innovations are tested and the performance of such sys-
3 tems, technologies, and innovations is evaluated with re-
4 spect to the independent verification requirements under
5 section 301(a)(7).

6 “(b) ELIGIBILITY.—An entity is eligible to receive a
7 grant under this part if it submits an application to the
8 Commission at such time, in such form, and containing
9 such information and certifications as the Commission
10 may require.

11 “(c) PEER REVIEW PRIOR TO CONDUCT OF GRANT
12 ACTIVITIES.—The Commission shall conduct peer review
13 of any activities proposed to be conducted under a grant
14 made under this section prior to the conduct of such ac-
15 tivities.

16 “(d) APPLICABILITY OF REGULATIONS GOVERNING
17 PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL
18 ASSISTANCE.—Any invention made by the recipient of a
19 grant under this section using funds provided under this
20 section shall be subject to chapter 18 of title 35, United
21 States Code (relating to patent rights in inventions made
22 with Federal assistance).

23 “(e) REPORT.—

24 “(1) IN GENERAL.—Each entity which receives
25 a grant under this section shall submit to the Com-

1 mission a report describing the activities carried out
2 with the funds provided under the grant.

3 “(2) DEADLINE.—An entity shall submit a re-
4 port required under paragraph (1) not later than 6
5 months after the end of the fiscal year for which the
6 entity received the grant which is the subject of the
7 report.

8 “(f) AUTHORIZATION OF APPROPRIATIONS.—

9 “(1) IN GENERAL.—There are authorized to be
10 appropriated for grants under this section
11 \$15,000,000 for fiscal year 2009 and such sums as
12 may be necessary for succeeding fiscal years.

13 “(2) AVAILABILITY OF FUNDS.—Amounts ap-
14 propriated pursuant to the authorization under this
15 subsection shall remain available, without fiscal year
16 limitation, until expended.”.

17 (2) CLERICAL AMENDMENT.—The table of con-
18 tents for such Act, as amended by subsection (a), is
19 amended by inserting after the item relating to sec-
20 tion 248 the following new item:

“Sec. 249. Pilot program for testing and analyzing the performance of new vot-
ing systems, technologies, and innovations.”.

21 **SEC. 7. REAUTHORIZATION OF REQUIREMENTS PAYMENTS.**

22 (a) TASK FORCE ON REQUIREMENTS PAYMENT
23 AMOUNTS.—

1 (1) IN GENERAL.—Part 1 of subtitle D of such
 2 Act (42 U.S.C. 15401 et seq.) is amended by adding
 3 at the end the following new section:

4 **“SEC. 259. TASK FORCE ON REQUIREMENTS PAYMENTS.**

5 “(a) ESTABLISHMENT.—The Commission shall es-
 6 tablish a task force to study and develop recommendations
 7 regarding the appropriate level of funding for require-
 8 ments payments under this part (hereafter in this part
 9 referred to as the ‘Task Force’).

10 “(b) MEMBERSHIP.—The Task Force shall be com-
 11 posed of members selected by the Commission, in con-
 12 sultation with the Technical Guidelines Development Com-
 13 mittee, the Standards Board, and the Board of Advisors.

14 “(c) REPORTS.—The Task Force shall submit, not
 15 less frequently than annually, to the Committee on Rules
 16 and Administration of the Senate and the Committee on
 17 House Administration of the House of Representatives re-
 18 ports on the recommendations developed under subsection
 19 (a).”.

20 (2) CLERICAL AMENDMENT.—The table of con-
 21 tents for such Act is amended by inserting after the
 22 item relating to section 258 the following new item:

“Sec. 259. Task force on requirements payments.”.

23 (b) SENSE OF THE SENATE RELATING TO AMOUNTS
 24 APPROPRIATED FOR REQUIREMENTS PAYMENTS.—It is
 25 the sense of the Senate that in appropriating amounts to

1 fund requirements payments under part 1 of subtitle D
 2 of title II of the Help America Vote Act of 2002 (42
 3 U.S.C. 15401 et seq.), Congress should—

4 (1) appropriate amounts sufficient to ensure
 5 that States and jurisdictions are able to meet the re-
 6 quirements of title III of such Act (42 U.S.C. 15481
 7 et seq.); and

8 (2) take into consideration the funding levels
 9 recommended by the task force on requirements pay-
 10 ments under section 259 of such Act (as added by
 11 subsection (a)).

12 (c) REAUTHORIZATION.—Section 257(a) of the Help
 13 America Vote Act of 2002 (42 U.S.C. 15407(a)) is amend-
 14 ed by adding at the end the following new paragraph:

15 “(4) For fiscal year 2010 and each year there-
 16 after, such sums as may be necessary.”.

17 (d) REPORTS.—Section 258 of such Act (42 U.S.C.
 18 15408) is amended—

19 (1) by striking “Not later” and inserting the
 20 following:

21 “(a) IN GENERAL.—Not later”; and

22 (2) by adding at the end the following new sub-
 23 sections:

1 “(b) MODEL REPORTS.—The Commission shall de-
 2 velop a model expenditure and receipts report for use by
 3 States in filing reports under this section.

4 “(c) REPORTS TO CONGRESS.—The Commission
 5 shall submit to the Committee on Rules of the Senate and
 6 the Committee on House Administration of the House of
 7 Representatives an annual report summarizing the ex-
 8 penditures, receipts, and activities reported by each State
 9 under subsection (a).”.

10 **SEC. 8. TECHNICAL GUIDELINES DEVELOPMENT COM-**
 11 **MITTEE.**

12 Section 221(c)(1) of the Help America Vote Act of
 13 2002 (42 U.S.C. 15361(c)(1)) is amended—

14 (1) in the matter preceding subparagraph (A),
 15 by striking “14” and inserting “16”;

16 (2) by redesignating subparagraph (E) as sub-
 17 paragraph (G); and

18 (3) by inserting after subparagraph (D) the fol-
 19 lowing new subparagraphs:

20 “(E) A representative of the voting system
 21 manufacturing industry.

22 “(F) A representative of the voting system
 23 accessibility and usability sector.”.

1 **SEC. 9. PROHIBITING REFUSAL TO ACCEPT VOTER REG-**
 2 **ISTRATION AND ABSENTEE BALLOT APPLICA-**
 3 **TIONS AND FEDERAL WRITE-IN ABSENTEE**
 4 **BALLOTS FOR FAILURE TO MEET NON-**
 5 **ESSENTIAL REQUIREMENTS.**

6 (a) VOTER REGISTRATION AND ABSENTEE BALLOT
 7 APPLICATIONS.—Section 102 of the Uniformed and Over-
 8 seas Citizens Absentee Voting Act (42 U.S.C. 1973ff–1)
 9 is amended by adding at the end the following new sub-
 10 section:

11 “(e) PROHIBITING REFUSAL TO ACCEPT APPLICA-
 12 TIONS FOR FAILURE TO MEET NONESSENTIAL REQUIRE-
 13 MENTS.—A State shall accept and process any otherwise
 14 valid voter registration application or absentee ballot ap-
 15 plication (including the official post card form prescribed
 16 under section 101) submitted in any manner by an absent
 17 uniformed services voter or overseas voter that contains
 18 the information required on the official post card form
 19 prescribed under section 101 (other than information
 20 which the Presidential designee, in consultation with the
 21 Election Assistance Commission, determines, under regu-
 22 lations promulgated by the Presidential designee, is not
 23 clearly necessary to prevent fraud in the conduct of elec-
 24 tions).”.

25 (b) FEDERAL WRITE-IN ABSENTEE BALLOT.—Sec-
 26 tion 103 of such Act (42 U.S.C. 1973ff–2) is amended—

1 (1) by redesignating subsection (f) as sub-
2 section (g); and

3 (2) by inserting after subsection (e) the fol-
4 lowing new subsection:

5 “(f) PROHIBITING REFUSAL TO ACCEPT BALLOT
6 FOR FAILURE TO MEET NONESSENTIAL REQUIRE-
7 MENTS.—A State shall accept and process any otherwise
8 valid Federal write-in absentee ballot submitted in any
9 manner by an absent uniformed services voter or overseas
10 voter that contains the information required to be sub-
11 mitted with such ballot by the Presidential designee (other
12 than information which the Presidential designee, in con-
13 sultation with the Election Assistance Commission, deter-
14 mines, under regulations promulgated by the Presidential
15 designee, is not clearly necessary to prevent fraud in the
16 conduct of elections).”.

17 **SEC. 10. BALLOT LAYOUT DESIGN.**

18 Section 254(a) of the Help America Vote Act of 2002
19 (42 U.S.C. 15404(a)), as amended by section 4, is amend-
20 ed by adding at the end the following new paragraph:

21 “(17) A description of the efforts the State will
22 make to assist State and local election officials in
23 improving ballot design, taking into consideration

- 1 best practices, including best practices developed by
- 2 the Commission.”.

